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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	

COMMENTS ON PETITIONS FOR RECONSIDERATION

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SUMMARY

These Comments by U S WEST, Inc. ("U S WEST") deal with a variety of petitions for reconsideration and clarification of the First Report and Order ("Order") of the Federal Communications Commission attempting to implement the interconnection provisions of the Telecommunications Act of 1996. Herein we seek to analyze several key points made by those seeking reconsideration. However, it must be remembered that this reconsideration proceeding takes place against a background of controversy and uncertainty. Specifically, a multitude of parties have challenged the Order itself as being the utter antithesis of what Congress had in mind when it enacted the Act. Indeed, we submit that the Order, rather than focusing on rules which favor the development of true competition in the local exchange marketplace, actually operates to thwart such competition by favoring a few large interexchange carriers over all other actual and potential competitors. U S WEST and others accordingly have sought judicial reversal of the Order.

As to reconsideration issues, U S WEST submits herein that the TELRIC pricing mandated by the Order is arbitrary and unlawful on account of its refusal to permit consideration of actual costs in determining interconnection prices. AT&T tries to expand this illegality by contending that it may receive free network element construction on demand, so long as such construction serves only to move the local exchange carrier ("LEC") network closer to the theoretically pure network hypothecated in the TELRIC methodology. AT&T's demands in this area would only serve to make a bad situation incomparably worse, and should be denied. In

this regard, MCI requests that the so-called Hatfield Model, a computer model which purports to (but doesn't) calculate incumbent LEC costs, be accepted as the standard Commission computer cost model. MCI's request should be rejected and the Hatfield Model discarded.

The mandatory wholesale discounts established in the Order also suffer from serious legal and practical infirmities. Time Warner points out that the costs excluded by the Order in calculating the wholesale prices to be paid by resellers exclude many costs which are specifically expended for the benefit of such resellers. Time Warner is clearly correct. Moreover, should a reseller purchase a "wholesale" service at a price which excludes product development and management costs, the reseller will not be able to receive the services which these excluded costs are utilized to provide. In another area, MCI's effort to have all incumbent LEC promotional offerings turned, by regulatory fiat, into retail services, should be rejected out of hand.

Several other matters are discussed briefly:

- New unbundled network elements should not be ordered at the federal level. If appropriate, such elements can be dealt with via negotiations and arbitrations.
- Local calling areas should be symmetrical for reciprocal compensation purposes.
- The Commission cannot lawfully order placement of remote switching equipment on the property of incumbent LECs.

- Network element cost unbundling must be coupled with retail service price unbundling.
- The Commission should not establish a rule permitting breach of lawful contracts.
- The Commission cannot regulate the positions taken by incumbent LECs before state regulatory agencies.
- Paging companies are not entitled to reciprocal compensation.

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COMMENTS ON PETITIONS FOR RECONSIDERATION

U S WEST, Inc. ("U S WEST") hereby files these comments on and oppositions to various petitions for reconsideration[1] in the above-captioned proceeding.[2]

[1] Petitions for Reconsideration and/or Clarification referenced herein filed by Association for Local Telecommunications Services ("ALTS"); AT&T Corp. ("AT&T"); Cellular Telecommunications Industry Association ("CTIA"); Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc. ("Comcast"); Kalida Telephone Company, Inc. ("Kalida"); MCI Telecommunications Corporation ("MCI"); MFS Communications Company, Inc. ("MFS"); Pilgrim Telephone, Inc. ("Pilgrim"); Public Service Commission of Wisconsin ("WI PSC"); Teleport Communications Group Inc. ("TCG"); The Local Exchange Carrier Coalition ("LECC"); Time Warner Communications Holdings, Inc. ("Time Warner"); Washington Utilities and Transportation Commission ("WA UTC").

[2] See Public Notice, Petitions For Reconsideration And Clarification Of Action In Rulemaking Proceedings, Report No. 2159, rel. Oct. 10, 1996.

I. INTRODUCTION

In this proceeding, the Federal Communications Commission ("Commission") sought to implement the provisions of the Telecommunications Act of 1996[3] as they related to local interconnection and competition. In an action which can only be described as Herculean, the Commission was able to draft an Order and rules on this subject totaling almost 700 pages just six months after the Act became law.[4] The individuals on the Commission's staff responsible for drafting this amazing document are to be commended for extraordinary diligence.

Unfortunately, the substance of the Order was, in many critical respects, utterly wrong-headed. While Congress foresaw a local exchange market based on free competition, private negotiations, and extensive state jurisdictional authority, the Order contradicted the Act in all of these particulars. The Order, rather than being pro-competitive, in fact favors a few large interexchange carriers ("IXC") at the expense of all other competitors, especially incumbent local exchange carriers ("LEC"). Facilities construction -- by both incumbent LECs and competitors -- is discouraged in favor of those competitors who favor resale. The Order is also anticompetitive because it works a major confiscation of incumbent LEC property to subsidize these preferred businesses -- the result being creation of a class of

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[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Act").

[4] See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order, FCC 96-325, rel. Aug. 8, 1996 ("Order").

subsidized competitors, the antithesis of true competition. The Order also destroys private negotiations which form the heart of the statutory scheme, and eviscerates the state jurisdictional authority upon which the statute relies for enforcement. Finally, the Order seems to extend Commission authority over interconnection -- especially in the area of pricing -- far beyond the scope of what Congress intended. In other words, despite the best of intentions by the Commission and its staff, the Order does not fulfill the main purposes of Congress in enacting the Act.

U S WEST and others have taken their fundamental grievances with the Order to the United States Court of Appeals.[5] It is U S WEST's claim that the Court should vacate and remand all, or practically all, of the Order as beyond the Commission's jurisdiction and statutory authority. This court proceeding will go forward during the processing of this reconsideration proceeding. Accordingly, it is entirely possible that the Commission, in this proceeding, is reconsidering refinements to an Order which will soon be vacated. From U S WEST's point of view, this inconvenience to parties before the Commission is necessary given what U S WEST considers to be the gravity of the errors in the Order. Nevertheless, it is clearly not U S WEST's position that the Commission has no authority under the Act, or that the Court proceeding will strip the Commission of all authority to regulate interconnection. Thus, even though the ultimate validity of portions of the Order are currently on appeal and are accordingly in doubt, the Commission is

[5] See Iowa Utilities Board, et al. v. Federal Communications Commission, CN 96-3321, et al., (8th Cir. 1996), Order Granting Stay Pending Judicial Review, Oct. 15, 1996.

nevertheless constrained to continue on the track of trying to determine, from its own perspective, the optimal regulatory structure.

In this regard, we submit that the Commission has the responsibility to try to fix arbitrary parts of the Order even though the Court of Appeals may strike those same rules down as arbitrary in the judicial proceeding. At the very least, the Commission must avoid decisions on reconsideration which take bad rules and make them worse. An example of such a situation is the position of AT&T (among others) on the Commission's Total Element Long Run Incremental Cost ("TELRIC") costing/pricing methodology.[6] AT&T not only wants costs calculated based on a theoretically perfect network, but wants all incumbent LECs to pay for construction of the theoretically perfect network without any reimbursement.[7] Such an approach would be clearly confiscatory and arbitrary, no matter what the fate of the existing TELRIC costing/pricing rules on appeal.

In the alternative, of course, the Commission could simply decline to rule on reconsideration until after the Eighth Circuit has acted on the merits of the pending appeals. The proceeding is being heard on an expedited basis and the Court will hear oral arguments in January of 1997. While this course of action could slow the reconsideration process somewhat, at least the Commission would know what was being reconsidered when it issued its reconsideration order.

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[6] AT&T at 18-24.

[7] Id. at 22-24.

In any event, U S WEST submits that it is critical that the Commission approach reconsideration with a view toward the long-term goals of the statute and the public interest. Clearly, in those areas where the original Order is confiscatory or anticompetitive, the Commission should resist temptations put forth by some to make the rules worse. In some areas, reasonable suggestions have been made to fix portions of the Order where defects can be readily cured. In all events, the Commission should be prepared to look at the big picture as the Order faces serious review by a federal appellate court, recognizing that the entire Order faces a significant potential for judicial reversal. In this light, reconsideration analysis can proceed without unnecessary expenditure of the Commission's or the public's resources.

II. TELRIC PRICING CANNOT FURTHER DEVIATE FROM REALITY

One of the most serious charges leveled against the Order is that the Commission's forward-looking costing methodology -- TELRIC -- deviates too far from the cost reality of incumbent LECs to fulfill the statutory and constitutional mandate that these incumbent LECs be permitted to recover the costs they incur in providing interconnection. The most significant point is based on the refusal to permit incumbent LECs to recover for investment prudently made in the very equipment used to provide interconnection. Because the Order directs that costs of interconnection be based on a theoretically most-efficient network (recognizing the reality of existing incumbent LEC wire centers), incumbent LECs are denied the ability to recover their actual costs of providing interconnection. This directive is manifest in two areas: 1) the refusal to permit recovery of actual costs; and 2) the refusal to permit recovery of underdepreciated costs in the equipment used to provide interconnection to the extent that regulators (including the Commission) have not permitted that plant be depreciated in a theoretically most-efficient fashion in the past.

We submit that these directives are erroneous. Any United States citizen (including any public utility corporation) cannot be forced to construct facilities for another without being guaranteed reimbursement for the costs of construction.[8]

However, several parties, not satisfied with the confiscation already worked by TELRIC pricing as delineated in the Order, have asked for yet more. The worst offender in this area is AT&T. Essentially, AT&T proclaims that the Commission should "clarify" that the costs of any construction undertaken by an incumbent LEC to improve its facilities to the level of the theoretically perfect network envisioned by the Order's view of TELRIC are costs which must be swallowed by the incumbent LEC, not charged to the carrier on whose behalf the construction was undertaken.[9] AT&T's reasoning is that because all TELRIC starts with the theoretically perfect network, costs incurred to get to this position are not TELRIC costs at all.[10] AT&T then requests further "clarification" to the effect that even

[8] See Comments of U S WEST, filed herein May 16, 1996, at 32-35.

[9] AT&T at 16-17.

[10] Id.

those costs which do represent incremental improvements to the theoretically perfect network should not be charged to the interconnector which demanded that the costs be incurred. Instead, AT&T posits that network modifications will result in a modified network which the incumbent LEC will be forced to use as well. Hence, argues AT&T, the incumbent LEC must be made to bear the lion's share of these costs as well, even though the network modification would not have been made except for the demand of the interconnector.[11] AT&T finally posits that a "default proxy" rate of $5.00 should be established for transactions which "can be accomplished largely through software or other electronic means."[12]

Fundamentally, these requests by AT&T point out two important and interrelated factors which are key in this proceeding. First, we submit that the AT&T demands are preposterous on their face. Imagine a constitutional scenario where the federal government could coerce a citizen into constructing a facility, but could refuse to pay for the construction on the basis that all the construction did was make the facility perfect, something which the government had a right to expect for free. Any reviewing court would make short work of any rule based on such logic -- which is the logic which drives AT&T's position. Second, AT&T's analysis really highlights the essential defect in the Commission's approach to TELRIC costing and pricing in the first place. Once costing and pricing of interconnection have been set loose from their moorings in the actual costs of the

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[11] Id.

[12] Id. at 18.

incumbent LEC, the potential for mischief becomes almost unlimited -- as illustrated by the AT&T clarification requests.[13] In any event, the AT&T requests for clarification are clearly unreasonable and unlawful and should be denied.

III. THE "WHOLESALE" DISCOUNT IS NOT REASONABLE

The Order sets massive "wholesale" discounts available to resellers. These discounts are, like the TELRIC costing discussed above, based on theory, not on actuality (i.e., the Order takes the statutory command that avoided costs be passed on to resellers and amends it to read "avoidable" costs). U S WEST pointed out in its initial comments in this docket that massive discounts for either "wholesale" prices or network elements would be anticompetitive and would discourage investment in new facilities by incumbent LECs and competitors alike.[14] The "wholesale" analysis found in the Order bears no resemblance at all to actual wholesale pricing in the real world, and indeed is both confiscatory and anticompetitive.

The fundamental error in the Order's approach to wholesale pricing is set forth in detail in Time Warner's petition.[15] Time Warner points out that the Commission's rules which detail the accounts from which costs must be subtracted

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[13] U S WEST does not suggest that forward-looking costing methodology is inappropriate, at least once historical costs of interconnection equipment and service have been recovered. The forward-looking costs required by the Order, however, are not economically reasonable.

[14] Comments of U S WEST, filed herein May 16, 1996 at 64-69.

[15] Time Warner at 3-17.

from retail prices evidence a seeming unawareness of just what activities are supported by these costs.[16] As Time Warner points out, the result of the rules is that "wholesale" prices are so far below actual costs of service that facilities-based competition, the alleged optimal result of the Act, will instead be stifled by the Commission's own rules. These defects are aggravated by the Commission's decision to permit competitors to mix "wholesale" services with network elements in a manner which is further antithetical to competition. Time Warner's petition is accurate, and U S WEST supports it.

However, Time Warner also points out two other issues inherent in the Commission's excessive discounts for resellers. First, the costs in the accounts delineated by the Order are real costs, and many of these costs have little or nothing to do with marketing to retail customers. Instead, these costs are expended in product development and support and produce real benefits for resellers. For example, the product management functions in Account 6611 include product modification, new product development, product forecasting and product costing (all initial to bringing products to the market). If a reseller obtains a product at a price which excludes the costs of providing certain types of product support, the reseller will not receive that product support as part or its wholesale service. Simply stated, if a reseller does not pay for service quality which is equal to that provided to U S WEST's end-user customers, it will not receive that service quality. The mandates for equality in the Act clearly contemplate that resellers get equal

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[16] Id. at 7-17.

treatment upon equal payment (less the costs of marketing to U S WEST's own customers embedded in the retail price). The Order in effect demands that resellers which choose a wholesale price based on the Order's formulas will not receive the same quality of service as retail customers or resellers which choose to pay for the product support services discarded by the Order.

Second, as pointed out by Time Warner, much marketing expense incurred by incumbent LECs is directly beneficial to resellers as well.[17] Rational analysis of the wholesale discount should also take cognizance of this fact. Merely because a particular cost is labeled as a "marketing" expense does not mean that it is not an expense which confers a significant benefit on the reseller of the incumbent LEC's service. If there were no incumbent LEC marketing, there would be no market for the reseller to enter, and evaluation of the wholesale discount must take cognizance of this fact.

In short, those parties which criticize the scope and extent of discounts made available to resellers are right on the mark. The wholesale discount must be reduced dramatically.

IV. PROMOTIONAL OFFERINGS CANNOT BE MANDATED AT WHOLESALE RATES

MCI contends that it must be given a further "wholesale" discount from incumbent LEC promotional offerings.[18] Under the Order, incumbent LEC

[17] Time Warner at 7-17.

[18] MCI at 8-12.

promotional offerings are not considered to be retail services unless they exceed 90 days in duration.[19] MCI's argument seems to be that incumbent LEC promotions may enable them to compete against MCI, and that the only way to forestall such competition is to make all promotional prices available for resale at a further discount.[20]

As is recognized in the Order, product promotions are a type of advertising expense.[21] An intelligent business seeking to promote a product will seek to balance its advertising budget between advertising, promotions and other mechanisms designed to entice consumers to try the product. There is no material difference between money spent for a discounted product promotion and money spent to advertise the product. By the same token, there is a vast difference between a retail offering and a promotional offering -- one which goes far beyond the much too limiting requirement in the Order that promotions cannot last more than three months. We assume that, under MCI's position, if U S WEST gave a free widget to each new customer as part of a product promotion, U S WEST would need to give MCI more expensive widgets on a general basis (to account for the "wholesale" discount in the costing of widgets). We submit that the best approach would be for the Commission to simply recognize the difference between retail offerings and product promotions and permit the filings of complaints if someone felt that a

[19] Order ¶ 950.

[20] MCI at 9-10.

[21] Order ¶¶ 941, 949.

particular promotion was in fact a sham retail offering. But the Order properly recognized the basic fact that product promotions are not retail offerings, and this correct finding should not be disturbed.[22]

V. NEW UNBUNDLED ELEMENTS SHOULD NOT BE ORDERED

Various parties demand that the Commission direct the unbundling on a national scale of new network elements, including subloops,[23] dark fiber,[24] the Advanced Intelligent Network ("AIN"),[25] and others.[26] The Commission should reject these petitions.

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[22] Id. ¶ 949.

[23] See, e.g., MFS at 9; ALTS at 11-12.

[24] See, e.g., MCI at 20-23; AT&T at 35-37.

[25] See, e.g., MCI at 24-28.

[26] Citing to 47 CFR § 51.313(c), Pilgrim argues that the Commission has already ordered LECs to provide access to their billing and collection systems as an unbundled network element. Pilgrim at 3. Compare the wording of Section 47 CFR § 51.319(f)(1). U S WEST disagrees with Pilgrim's analysis, based on the Commission's definition of the term "network element" and "billing" at 47 CFR § 51.5. There the definition of "network element" makes clear that "information sufficient for billing and collection" is all that is required (compare Title I, Section 3, Definition of Network Element (29) to the same effect). Similarly, the definition of "billing" reinforces this position ("involves the provision of appropriate usage data by one . . . carrier to another to facilitate customer billing.") 47 CFR § 51.5. Compare the Commission's Order at n.1273, adopting the definition of "billing" included in the *AT&T-Bell Atlantic Joint Ex Parte*, which defined "billing" in the same terms as the Commission's promulgated rules. Furthermore, the Commission's discussion of access to Operational Support Systems ("OSS") in its Order suggests that it is not the billing function that is a network element but the "operations support systems functions" supporting billing that are (Order ¶¶ 523, 525), suggesting -- again -- that it is the provision of information necessary for billing and collection that is included in the statutory and Order obligation. The

However, there is a more compelling reason for denying these demands for additional federally mandated national network elements. Namely, there is nothing in the Order which in any way precludes the offering of these facilities as network elements if, indeed, it is technically feasible to do so and proper cost reimbursement can be negotiated. All the Order did in this regard was decline to establish a federal mandate for these facilities, nothing more. The various parties demanding that these facilities be made federally mandated network elements have not made any showing at all as to why, if it is indeed technically feasible to make them available as network elements in a manner consistent with the Act, they will not be made available via negotiations and arbitrations pursuant to the Act. We submit that a party demanding more federal intervention into the negotiation/arbitration process must demonstrate that such intervention is indeed

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Commission should conform the two above-cited provisions to make clear this differentiation.

In U S WEST's opinion, it is ironic that Pilgrim continues to press this issue. U S WEST was forced to cancel its billing and collections agreement with Pilgrim as a result of repeated violations of its content policy with respect to 900 billing. While U S WEST is more than willing to provide Pilgrim with the information it needs to bill its customers "without regard to the service provided or the content . . . of the service," (quoting Pilgrim at 6 regarding the obligation it believes should be imposed on incumbent LECs), U S WEST should not be obligated to associate with carriers which, in its opinion, compromise its internal billing policies or its reputation. See Carlin Communications v. Mountain St. Tel. & Tel., 827 F.2d 1291, 1297 (9th Cir. 1987), cert. denied 485 U.S. 1029 (1988); and see In the Matter of Audio Communications, Inc. Petition for a Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act, Memorandum Opinion and Order, 8 FCC Rcd. 8697, 8702 ¶¶ 33-34 (1993).

necessary -- including documentation that the process has been tried and has failed. No such showing has been made here.

VI. THE COMMISSION SHOULD CATEGORICALLY REJECT THE HATFIELD MODEL

One of the recurring chimera of this proceeding is something called the "Hatfield Model" (or "Model"), a computer model AT&T and MCI claim properly calculates forward-looking costs. The Model is patently ridiculous, producing such anomalies as loop costs less than one-third of their actual forward-looking costs, but it keeps reappearing. Now, on reconsideration, MCI asks the Commission to "endorse the Hatfield model as a forward-looking methodology that meets its criteria for measuring cost pursuant to § 252(d)(1)."[27]

Stated quite simply, the Model is useless as an analytical tool for anything. Indeed, it turns out that the Model's developers were themselves unable to verify many of the Model's critical input assumptions. Based on depositions taken of Model developers (primarily Robert Mercer) and a report prepared by a member of the Maine Public Utilities Commission,[28] U S WEST has been able to identify on an initial basis some of the major flaws in the Model:

- More than 20 important inputs to the Hatfield Model are based upon what Hatfield and Associates describes as "HAI assumptions" and "discussions

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[27] MCI at 6.

[28] See State of Maine Public Utilities Commission Ex Parte, submitted by Joel Shifman, Sep. 24, 1996.

between Hatfield, AT&T and MCI." Neither AT&T nor MCI has ever offered any evidence in this proceeding or elsewhere to explain these inputs or to allow them to be verified.

- A large percentage of the inputs and assumptions in the Model were provided by AT&T and MCI employees, or consultants paid by AT&T and MCI to provide inputs and assumptions. For example, a retired NYNEX employee, John Donovan, provided most of the engineering assumptions in the Model in a series of telephone conversations and a small number of meetings with Hatfield and Associates. He did not provide any documents to support his assumptions and inputs, and Hatfield accepted them without conducting any independent verification. As far as can be determined, no one at Hatfield and Associates, AT&T or MCI can provide an explanation of any of Mr. Donovan's assumptions.
- Hatfield and Associates did not conduct empirical testing to check for modeling errors.
- Hatfield and Associates did not conduct a sensitivity analysis to determine which inputs exert the greatest effect on the Model's outputs.
- The results of the Hatfield Model do not come close to approximating the net book costs associated with a network.
- The Hatfield Model attributes only 33% of the costs of installing structure to the telephone company based on the unsupportable assumption that those costs will always be shared with other utilities.

- The fill factors used by the Hatfield Model do not reflect actual fill factors, do not allow for future growth, are based on the unrealistic assumption of only two lines per residence, do not account for regulatory obligations such as service-on-demand, and are based in part upon a study conducted in 1951.
- The Model incorrectly assumes that the cost of installing cable is the same in undeveloped environments as it is in developed areas with sizable populations.
- The switching costs the Model uses are unrealistically low.
- The Model reduces overhead costs by 3% purportedly to account for efficiencies that will result from a competitive environment. However, the Model does not take account of the effects of a competitive environment for determining depreciation lives and the cost of capital, thereby improperly lowering costs.
- The Model does not account for differences among states or for differences among networks.

All of these defects are, of course, individually and cumulatively disastrous. But consider the most astonishing of all -- neither Hatfield nor AT&T nor MCI can verify whether the inputs to the Model are correct, or even where they came from. We submit that the Commission can do everyone a favor in this proceeding by granting "inverse relief" to MCI. Namely, the Hatfield Model should be thrown out and forever consigned to the realm of darkness where it belongs.

VII. THE COMMISSION SHOULD AVOID MAKING COMMERCIAL MOBILE RADIO SERVICE ("CMRS") OR OTHER INTERCONNECTOR LOCAL CALLING AREAS MORE UNREASONABLE

In the Order, for purposes of reciprocal compensation, the Commission directs that CMRS providers may use a larger "local calling area" (the Major Trading Area ("MTA")) than that used by incumbent LECs.[29] This asymmetrical treatment of a local calling area is unfair and arbitrary -- in the U S WEST region, there are fewer MTAs than there are LATAs. For reciprocal compensation purposes, it is imperative that local calling areas be the same. Several petitioners wish to further extend this disparity. Comcast, for example, wants a "clarification" that the local calling area conforms to the CMRS network, and claims that CMRS providers are entitled to "symmetrical compensation" based on the CMRS architecture.[30] Comcast requests that the Commission rule that incumbent LECs may only charge transport and termination charges when terminating traffic on behalf of a CMRS provider, and may not assess additional charges for interconnection (under 47 USC 251(c)(2)) (even though transport and termination charges obviously are meaningless in the absence of interconnection).[31] CTIA goes further, proclaiming that CMRS providers need not pay access charges for termination of CMRS traffic even when the traffic crosses MTA boundaries.[32] Several petitioners request that "symmetrical"

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[29] 47 CFR § 51.701(b)(2).

[30] Comcast at 14-15.

[31] Id. at 15.

[32] CTIA at 2-3.

compensation be based on functionality, and that if a CMRS switch provides what the providers call "tandem functions," the CMRS provider should be compensated based on tandem costs (even if such costs do not exist).[33]

These petitioners all really miss the point of the statutory requirement that termination charges be based on "the additional costs of terminating" calls.[34] While there are various acceptable ways of determining reciprocal compensation, particularly in a negotiation situation, the regulatory demands of these petitioners all seek to establish costs based on the same fundamental fantasies as underlie the worst parts of TELRIC. Reciprocal compensation cannot, for example, be extended to the costs of tandem switches which do not exist, as Comcast would require. If an incumbent LEC provides tandem switching, proper costing principles must result in payment for tandem switching. If an interconnector does not provide tandem switching, it cannot be paid for tandem switching, no matter how large its service area.[35]

VIII. PAGING COMPANIES SHOULD NOT RECEIVE RECIPROCAL COMPENSATION

Several petitioners seek reconsideration of the rule which permits paging carriers to receive "reciprocal compensation" for paging calls, notwithstanding the

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[33] See, e.g., Comcast at 14-15; MFS at 25-28.

[34] Act, 110 Stat. at 68 § 252(c)(2)(A)(i), (ii).

[35] Obviously, these reciprocal compensation principles apply to all interconnectors, not just to CMRS providers.

fact that all paging calls are one way and that this rule would result in an uneconomical windfall for paging carriers.[36] U S WEST supports these comments. In no way can a service which is entirely terminating be considered eligible for reciprocal compensation -- the unilateral nature of the transmissions precludes a finding that compensation is or can be reciprocal in nature. Paging companies do not provide local exchange service or any carrier service of a sort which would entitle them to reciprocal compensation. Incumbent LEC networks, on the other hand, provide value to paging companies. Under the new rules, paging companies would be required to purchase interconnection (if Comcast has its way, paging companies will not even pay for interconnection), but would otherwise be paid by the landline LECs for the value landline LECs are providing to paging companies. This anomaly is fundamentally unfair and irrational. The Commission should specify that specialty carriers such as paging companies are not entitled to reciprocal compensation.

IX. THE RULES SHOULD NOT BE MODIFIED TO PERMIT INTERCONNECTORS TO COLLOCATE REMOTE SWITCHING MODULES ("RSM")

AT&T requests that the Commission Order that "CLECs may collocate RSMs in [incumbent] LEC space when the RSMs are used primarily to perform the functions otherwise performed by transmission equipment such as digital loop

[36] See, e.g., LECC 17-18; Kalida at 2-4.

carriers ("DLCs") and are only incidentally performing line-to-line switching."[37] AT&T's arguments are basically twofold: that RSMs are not primarily switches, and even if they perform some switching it is technically and economically efficient to allow their collocation and use.[38]

AT&T acknowledges that the Commission held, in its Order, that incumbent LECs were not required to place switching equipment in or on their premises, on the grounds that it did not appear that such equipment "is used for the actual interconnection [of networks] or access to unbundled elements."[39] Despite the clear language of the Act, AT&T basically argues that the Commission was wrong in its conclusion.

The Commission should not change its position on switch location in/on incumbent LEC premises. Its intuitive sense is correct. Switching equipment, as a general matter, does not meet either the statutory or Commission-promulgated requirement that only "equipment necessary for interconnection or access to unbundled network elements. . . ."[40] Not only does switching equipment not generally meet the statutory or regulatory requirements, but based on historical information reported in the press with respect to AT&T's RSM placements, AT&T has serious reservations about the use of such switching equipment. Such

[37] AT&T at 32-33.

[38] Id. at 33 and n. 26.

[39] Id. at 32, quoting Order ¶ 581.

[40] Act, 110 Stat. at 63 § 251(c)(6) and 47 CFR § 51.5.